

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

McKESSON CORPORATION, a Delaware
corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC.,
f/k/a Drugmax, Inc., a Connecticut corporation,

Defendant.

FAMILYMEDS GROUP, INC.,
f/k/a Drugmax, Inc., a Connecticut corporation,

Counter-Claimant,

v.

McKESSON CORPORATION, a Delaware
corporation,

Counterdefendant.

FAMILYMEDS, INC.,
a Connecticut corporation,

Cross-Complainant,

v.

McKESSON CORPORATION, a Delaware
corporation,

Cross-Defendant.

Case No. 4:07-cv-05715 WDB

**[PROPOSED] ORDER
GRANTING SUMMARY JUDGMENT
TO McKESSON CORPORATION**

1 On August 6, 2008 at 1:30 p.m. the motion for summary judgment or, in the alternative,
2 summary adjudication (the "Motion") brought by Plaintiff, Counterdefendant, and Cross-
3 Defendant McKESSON CORPORATION's ("McKesson") against Defendant and
4 Counterclaimant FAMILYMEDS GROUP, INC. f/k/a Drugmax, Inc ("FM Group") and Cross-
5 Complainant FAMILYMEDS, INC. ("FM Inc." and together with FM Group called
6 "Familymeds") came on for hearing before the Court.

7 FINDINGS

8 Having fully reviewed and considered all the parties' submissions and arguments, the Court
9 hereby finds as follows:

10 A. There are no triable issues of fact as to McKesson's breach of contract claim against
11 FM Group, and McKesson is entitled to judgment as a matter of law on that claim. The Court finds
12 that it is undisputed that:

13 i. on February 2, 2007 for fair and valuable consideration, McKesson and FM
14 Group entered into contract entitled "Supply Agreement", the terms of which are
15 sufficiently precise, certain, and definite for enforcement by this Court,

16 ii. McKesson has performed all of its contractual obligations as related to FM
17 Group's corresponding obligation to render payments under the Supply Agreement, and
18 McKesson owes no further duties or obligations to FM Group prior to payment,

19 iii. FM Group has breached its unconditional payment obligations under the Supply
20 Agreement within the required time for performance, and

21 iv. as a result of FM Group's undisputed breach of its unconditional obligation to
22 make payments that are due and owing to McKesson under the Supply Agreement,
23 McKesson has suffered damages in the amount of \$814,419.44 plus such additional service
24 charges as accrue from and after May 31, 2008, plus prejudgment interest on the amounts
25 owing as of November 9, 2007 when the Complaint was filed, plus attorneys' fees and costs
26 according to proof.

1 B. The Court further finds that McKesson is entitled to judgment as a matter of law on
2 FM Group's claims for "specific performance of contract" and "accounting" as alleged by FM
3 Group against McKesson in the "Counterclaim for Specific Performance of Contract and
4 Accounting; Cross-Complaint for Accounting" filed by FM Group and FM Inc. in this action (the
5 "Counterclaim & Cross-Complaint"). FM Group's specific performance and accounting claims are
6 based on the Supply Agreement it entered into with McKesson. The Supply Agreement imposes
7 no obligation on McKesson to account to FM Group in any manner whatsoever, and FM Group has
8 no other basis in which to impose an accounting obligation on McKesson.

9 C. The Court further finds that there are no triable issues of fact as to FM Inc.'s
10 "accounting" claim against McKesson as alleged in the Counterclaim & Cross-Complaint. The
11 Court finds no evidence that McKesson and FM Inc. are in privity of contract nor that McKesson
12 owes any duties to FM Inc. such that McKesson should account to FM Inc. To the extent that FM
13 Inc.'s accounting claim is based on the "Prime Warehouse Supplier Agreement" or the "First
14 Amendment to Prime Warehouse Supplier Agreement," McKesson was not a signatory or a party
15 to those agreements, and has no obligations, accounting or otherwise, under those agreements.

16 D. The Court additionally finds that McKesson and D&K Healthcare Resources Inc.
17 ("D&K") are separate corporate entities. McKesson acquired the stock of D&K in August of 2005,
18 but there is no evidence that D&K's operational liabilities became the liabilities of McKesson.

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JUDGMENT AND ORDER

Based on the findings of fact and conclusions of law set forth above, the Court hereby
ORDERS, ADJUDGES AND DECREES:

1. The Motion is hereby GRANTED;
2. Summary judgment shall be entered in favor of McKesson on all issues and claims set forth in its "Complaint for Breach of Contract" against FM Group, and McKesson Corporation is hereby awarded judgment against FM Group in the amount of \$814,419.44, *plus* such additional service charges as accrue under the terms of the Supply Agreement from and after May 31, 2008 until the date of entry of judgment, *plus* prejudgment interest on the amounts owing as of November 9, 2007 when the Complaint was filed until the date of entry of judgment, and plus attorneys' fees and costs, all according to proof; and
3. Summary judgment shall be entered in favor of McKesson and against FM Group and FM Inc. and on all issues and claims alleged in the Counterclaim & Cross-Complaint.

IT IS SO ORDERED.

DATED:

THE HONORABLE WAYNE D. BRAZIL
United States Magistrate Judge